

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of)

MATRIX TELECOM, INC. )

For an Exemption/Waiver or )  
Approval of Certain Financing )  
Arrangements. )

DOCKET NO. 2006-0384

DECISION AND ORDER NO. 23136

Filed Dec. 14, 2006

At 2 o'clock P.M.

Karen Higashi  
Chief Clerk of the Commission

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DIV. OF CONSUMER ADVOCACY  
DEPT. OF COMMERCE AND  
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STATE OF HAWAII

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KAREN HIGASHI  
Chief Clerk, Public Utilities  
Commission, State of Hawaii.

K. Higashi

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Docket No. 2006-0384  
Decision and Order No. 23136

DECISION AND ORDER

By this Decision and Order, the commission waives the requirements of Hawaii Revised Statutes ("HRS") §§ 269-7(a), 269-17 and 269-19 and Hawaii Administrative Rules ("HAR") §§ 6-61-101 and 6-61-105, to the extent applicable, with respect to MATRIX TELECOM, INC's ("Applicant") request to approve certain debt financing arrangements involving Applicant, Americatel Corporation ("Americatel"), Platinum Equity, LLC ("Platinum Equity"), EnergyTRACS Acquisition Corp. ("EnergyTRACS") and Matrix Telecom of Virginia, Inc. ("Matrix of Virginia") to allow Applicant to use the proceeds of the debt financing arrangements to introduce new services to its customers, expand into new markets and to refinance existing indebtedness ("Proposed Transaction").

I.

Background

A.

Description of Subject Entities

Applicant is a competitive provider of integrated communications services, including local, 1+ long distance and toll-free voice services, together with a range of data services, such as dedicated Internet access, frame relay and point-to-point transmission services. Applicant is incorporated in the state of Texas and is authorized to provide service in all fifty (50) states and the District of Columbia. In Hawaii, Applicant is authorized to provide intrastate telecommunications services as a reseller, which primarily includes "1 plus," calling card, toll-free, and special promotional offerings.<sup>1</sup> Matrix of Virginia is a subsidiary of Applicant.

Americatel is a Delaware corporation with its principal offices in Miami, Florida. Americatel provides international and domestic facilities-based and resold long distance services. It is authorized to provide intrastate, interstate and international long distance services in each of the forty-eight (48) contiguous states. Americatel is not authorized to provide telecommunications services in Hawaii.

Platinum Equity is a Delaware limited liability company headquartered in California. It has indirectly held 100% of the equity of Applicant since 1999, and 95% of the equity of

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<sup>1</sup>See Decision and Order No. 21882, filed on June 20, 2005, in Consolidated Dockets Nos. 05-0063 and 05-0077.

Americatel since July 2006. Platinum Equity is a global firm specializing in merger, acquisition and operation of companies that provide services, including information technology, telecommunications, logistics, manufacturing, and entertainment distribution. Since its founding in 1995, Platinum Equity has acquired more than sixty (60) businesses with more than \$12 billion in aggregate revenue. It currently holds its interests in Applicant and Americatel through its wholly owned subsidiary, EnergyTRACS.

B.

Application

On September 21, 2006, Applicant filed an application seeking an expedited commission decision waiving the requirements of HRS §§ 269-7(a), 269-17 and 269-19, or, in the alternative, approval of the Proposed Transaction ("Application").<sup>2</sup> According to Applicant, the Proposed Transaction involves a September 14, 2006 Credit Agreement, which is structured in two phases. The first phase, currently in effect, will have a maximum term of 364 days. During this phase, Applicant and Americatel (collectively, the "Companies"), are jointly and severally liable co-borrowers for new debt obligations of up to \$90 million, consisting of a \$40 million term loan and a \$50 million revolving credit facility.

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<sup>2</sup>Applicant served copies of the Application on the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate"), an ex officio party to this proceeding.

This debt is guaranteed by Platinum Equity, EnergyTRACS, and Matrix of Virginia, all affiliates of the Companies. Applicant is not pledging or encumbering any of its assets, nor is its equity being pledged as security in this first phase of the Proposed Transaction. During this first phase, the Companies have until March 13, 2007, to secure all necessary regulatory approvals necessary to implement the second phase of the Credit Agreement. If such approvals are not received by that date, the Companies will be in default under the terms of the Credit Agreement, and the lender may terminate the financing arrangement.

The second phase of the Credit Agreement will involve the Companies pledging all of their assets, and their stock, as collateral for this indebtedness. The Companies will continue to act as co-borrowers, and will remain jointly and severally liable for the entire debt; however, the guarantees of the debt by Platinum Equity, EnergyTRACS, and Matrix of Virginia will terminate. This structure will continue through the maturity date of the Credit Agreement, which is September 14, 2011.

In preparation for the second phase, EnergyTRACS will transfer the stock of the Companies to MTAC Holding Corporation ("MTAC"), a Delaware corporation newly formed and a wholly owned subsidiary of EnergyTRACS. MTAC will be an intermediary holding company between the Companies and EnergyTRACS, and will hold its equity interests in the Companies indirectly. Ultimate control of the Companies will remain with Platinum Equity.

Applicant states that the proceeds from the Proposed Transaction will be used to introduce new services, expand into new markets, allow more consumers to benefit from competitive services and to refinance existing indebtedness.

C.

Consumer Advocate's Statement of Position

On October 18, 2006, the Consumer Advocate filed its statement of position in which it states that it does not object to commission waiver of its authority to approve the Proposed Transaction. In the alternative, the Consumer Advocate does not object to commission approval of Applicant's participation in the Proposed Transaction pursuant to HRS §§ 269-17 and 269-19, and a waiver of the HRS § 269-17 restriction requirement regarding the use of the financing proceeds.

II.

Discussion

HRS § 269-16.9 allows the commission to waive regulatory requirements applicable to telecommunications providers if it determines that competition will serve the same purpose as public interest regulation. Specifically, HAR § 6-80-135 permits the commission to waive the applicability of any of the provisions of HRS chapter 269 or any rule, upon a determination that a waiver is in the public interest.

In this docket, we find, at this time, that Applicant is a non-dominant carrier in the State. We also find that the Proposed Transaction is consistent with the public interest, and that competition, in this instance, will serve the same purpose as public interest regulation. Thus, the commission concludes that the requirements of HRS §§ 269-7(a), 269-17 and 269-19 should be waived, to the extent applicable, with regards to the matters in this docket, pursuant to HRS § 269-16.9 and HAR § 6-80-135.<sup>3</sup> Similarly, based on these findings and conclusions stated above, we will also waive the provisions of HAR §§ 6-61-101 and 6-61-105, to the extent that the Application fails to meet any of these filing requirements.

### III.

#### Orders

#### THE COMMISSION ORDERS:

1. The requirements of HRS §§ 269-7(a), 269-17 and 269-19, to the extent applicable, are waived with respect to the Proposed Transaction, described in the Application filed on September 22, 2006.


2. The filing requirements of HAR §§ 6-61-101 and 6-61-105, to the extent applicable, are also waived.

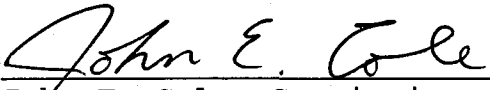
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<sup>3</sup>The commission will continue to examine each application or petition and make determinations on a case-by-case basis as to whether the applicable requirements of HRS §§ 269-7(a), 269-17 or 269-19 should be waived. Thus, our waiver in this instance should not be construed by any public utility, including Applicant, as a basis for not filing an application or petition regarding similar transactions that fall within the purview of these statutes.

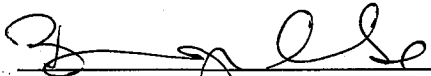
DONE at Honolulu, Hawaii DEC 14 2006.

PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By   
Carlito P. Caliboso, Chairman

By   
John E. Cole, Commissioner

APPROVED AS TO FORM:

  
Benedyne S. Stone  
Commission Counsel

2006-0384.eh



CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 23136 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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Karen Higashi

DATED: DEC 14 2006